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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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7 LAURICE MCCURDY,
8 Plaintiff,

2:08-CV-01742-PMP-PAL

9
10 vs.

ORDER

11 LEROY KIRKEGARD, et al.,
12 Defendants.
13

14 Before the Court for consideration is Federal Defendant Aaron Fisher's
15 Motion to Dismiss or in the Alternative Summary Judgment (Doc.#68), filed on July
16 22, 2010. Defendant Fisher's motion is fully briefed, and for reasons set forth
17 therein the Court finds that Defendant Fisher is entitled to the relief requested.

18 Specifically, Plaintiff McCurdy alleges that Defendant Fisher failed to take
19 McCurdy's medical needs seriously, subjected him to what Plaintiff characterizes as
20 "diesel therapy" by transferring him from one detention facility to another, and
21 violated Plaintiff's rights by using a "black box" restraint during the various
22 transfers. The Court finds, however, that the factual allegations set forth in
23 Plaintiff's Complaint fail to state a claim for relief as to Defendant Fisher which is
24 plausible on its face and would allow the Court to draw inferences that Defendant
25 Fisher is liable for the misconduct alleged. Moreover, nothing in the record before
26 the Court supports a plausible finding that Defendant Fisher had any personal

1 involvement in making decisions where Plaintiff McCurdy would be detained or
2 transferred, nor did Defendant Fisher have a decision making role involving
3 Plaintiff's medical treatment. Additionally, there being no allegations or evidentiary
4 basis to conclude that Defendant Fisher knowingly violated a clearly established
5 constitutional or legal right of Plaintiff McCurdy, Defendant Fisher is entitled to
6 qualified immunity with regard to Plaintiff's civil claims.

7 **IT IS THEREFORE ORDERED** that Defendant Deputy United States
8 Marshal Aaron Fisher's Motion to Dismiss or in the Alternative, Enter Summary
9 Judgment (Doc. #68) is **GRANTED**.

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11 DATED: October 7, 2010.

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13 PHILIP M. PRO
14 United States District Judge
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